

In the United States Court of Appeals  
for the Ninth Circuit

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ARTHUR V. MORGAN and DOROTHY O. MORGAN,  
PETITIONERS

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

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On Petition for Review of the Decision of the  
Tax Court of the United States

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BRIEF FOR THE RESPONDENT

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**OPINION BELOW**

The findings of fact and opinion of the Tax Court (R. 19-34) are reported at 29 T.C. 63.

**JURISDICTION**

This case involves deficiencies in federal income tax for 1950 in the amount of \$4,076.40 (R. 35). The taxpayer's <sup>1</sup> income tax return for 1950 was filed with

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<sup>1</sup> For convenience Arthur V. Morgan will be referred to in this brief as the taxpayer, although his wife, Dorothy O. Morgan, is also a petitioner, having filed a joint return with her husband for the taxable year 1950.

the Collector of Internal Revenue for the Sixth District of California. (R. 20.) On December 6, 1954, the Commissioner mailed the taxpayer a notice of deficiency in the amount of \$4,076.40. (R. 8-11.) On March 3, 1955, the taxpayer filed a petition with the Tax Court for a redetermination of the deficiency under the provisions of Section 272 of the Internal Revenue Code of 1939. (R. 3, 4-11.) The decision of the Tax Court was entered October 21, 1957. (R. 34-35.) The case is brought to this Court by a petition for review filed January 7, 1958. (R. 4, 35-37.) Jurisdiction is conferred on this Court by Section 7482 of the Internal Revenue Code of 1954.

### QUESTION PRESENTED

Whether the taxpayer's accrual basis partnership, which sold property on credit and discounted its customers' obligations with a bank, realizing part of its gain in cash and part in the form of amounts which the bank credited to it—the latter portion ultimately to be satisfied either by payment in cash or by offset against the partnership's obligations to the bank—was required to report the amount of gain so credited (as well as the gain in cash) as income for the year in which the sales and credits were made.

### STATUTE AND REGULATIONS INVOLVED

The applicable provisions of the statute and Treasury Regulations involved are printed in the Appendix, *infra*.

## STATEMENT

The facts as stipulated by the parties (R. 14-19), and as found by the Tax Court (R. 20-29), may be summarized as follows:

The taxpayer and Frank D. Lortscher formed a partnership doing business as Art Morgan Motor Company (hereinafter referred to as the partnership) in Long Beach, California, on January 7, 1950. The taxpayer held a 75 per cent interest in that partnership; Lortscher, a 25 per cent interest. The partnership kept its books and returned its income on the accrual method of accounting. The partnership was actively engaged in the purchase and retail sale of used automobiles. A large number of automobiles were sold under conditional sales contracts. In all such sales the conditional sales contracts were simultaneously assigned by the partnership to Farmers & Merchants Bank, Long Beach, California, hereinafter referred to as the bank. (R. 20-21.)

The forms used in the making of conditional sales were furnished by the bank to the partnership. In all of the conditional sales contracts, the purchasers agreed to pay the "Contract Balance" (comprising the several items set forth in the example given below) in equal successive monthly installments at an office of the bank. The contracts provided that title to the cars should remain in the dealer until all payments were made and all conditions of the contract were complied with. Two forms of assignment were used by the partnership in assigning the contracts to the bank. Under one form the assignment was made

“with recourse”; under the other the assignment was made “without recourse.” (R. 21.)

From January 7, 1950, to July 1, 1950, the partnership assigned contracts to the bank under the form which bore the caption “With Recourse” and from July 1950 until the end of the year it assigned contracts under the form designated “Without Recourse.” (R. 21-22.) Both forms of assignment during the year 1950 were made subject to an additional agreement between the partnership and the bank which contained the following provisions (R. 22-23):

4. Evidence of registration showing the Bank as legal owner must accompany all contracts submitted for purchase.

\* \* \* \*

6. Notwithstanding the fact that the said contracts have been and will be assigned to Bank by Dealer without recourse, Dealer promises and agrees to repurchase from Bank contracts, including those executed or assigned on or subsequent to July 1st, 1950 on all such repossessed automobiles by paying Bank therefor the unpaid balance owing on such defaulted contracts, including all sums of principal, interest, charges due and to become due, and any and all collection and repossession costs, less a pro rata rebate of Bank's unearned charges. Dealer hereby waives the provisions of Section 2845, 2849 and 2850 of the Civil Code of the State of California.

\* \* \* \*

10. Bank may retain from the proceeds of each contract purchased hereunder, agreed upon amounts and the accumulated total of said amounts shall be retained by Bank in a Dealer

Reserve Account as security for any and all obligations of Dealer to Bank, now or hereafter existing. Bank agrees, so long as Dealer shall not be in default to Bank and remains solvent and in the automobile business, to return to Dealer every six months, upon request, any amount in said account in excess of 10% of the then aggregate unpaid balances of said contracts, provided that before any releases are made to the Dealer that a 100% reserve is set up for all repossessions, skips and past due accounts which are more than 35 days delinquent. If this agreement be terminated or Dealer discontinues the discounting of contracts, then Bank shall retain all funds in said Reserve Account until all contracts, purchased by Bank from Dealer shall have been paid in full, whereupon, the balance if any, shall then be paid to Dealer.

11. This Agreement may be terminated at any time by either party upon notice in writing to the other, provided, however, that such termination will not impair or effect (*sic*) the liability or obligations of Dealer to Bank under this Agreement on account of any contract purchased or transaction originated prior to the time such notice is given.

The bank did not give any consideration to the fair market value of any contract in purchasing it from the partnership. However, the credit of the purchaser of each automobile was checked by the bank and the sale of each car did not become final until the bank approved the credit. (R. 23.)

The following example is typical, except for the amounts, of the conditional sales contracts entered

into between the partnership and the purchasers of used cars during the year 1950 (R. 24) :

1. Cash Purchase Price	\$2,795.00
2. Sales Tax	83.85
3. Total Cash Purchase Price	2,878.85
4. Less: Downpayment	1,645.85
	<hr/>
5. Unpaid Cash Purchase Price	1,233.00
6. Add: Motor Vehicle Tax	40.00
	<hr/>
7. Unpaid Balance	1,273.00
8. Add: Time Price Differential	143.15
	<hr/>
(Finance Charges or Interest)	
9. Contract Balance	1,416.15

Upon assignment of a contract containing the figures in the example above set out, the bank would immediately pay to the partnership the amount of \$1,233 shown as item 5 and designated "Unpaid Cash Purchase Price." Item 6, the amount of \$40 representing motor vehicle tax, would be paid by the bank either to the partnership or directly to the Department of Motor Vehicles, depending upon whether the partnership or the bank cleared the title to the car. Item 8, designated as "Time Price Differential," consisted of finance charges or interest, and was variable, depending upon what the partnership saw fit to charge the purchaser. At the time of assignment of contracts by the partnership, the bank computed its discount at an agreed percentage of the "Contract Balance" which, in the above example, is \$1,416.15. The rate of discount used in 1950 was 4 per cent per year. In the above example the discount would amount to \$70.90, since the contract was to run for

a period of 15 months. In addition to the discount, the bank made a flat charge of \$5 on each assigned contract. The bank treated the \$5 as earned discount and the \$70.90 as unearned discount. The remainder of the contract balance not paid over in cash to the dealer would be credited to the dealer's reserve account provided for in the above-quoted agreement. In the example, the difference between \$75.90, representing the bank's discount, and the \$143.15, representing the "Time Price Differential"—or \$67.25—represents the amount which would be so credited. (R. 24-25.)

The entries in the dealer's reserve account on the books of the bank were recorded by the partnership in a memorandum account. The partnership did not record such entries in a general ledger account, nor did it reflect them in any of its financial statements. The bank informed the partnership of entries made in the reserve account and periodically sent the partnership statements showing the balance in such account. The bank maintained the dealer's reserve account in order to provide security for the payment of the assigned contracts and to induce the dealer to discount contracts with it. The dealer's purpose in entering into the arrangement with the bank was to secure necessary financing for its operations. (R. 25.)

During the year 1950 some of the purchasers under contracts which the partnership had assigned to the bank paid off the contracts prior to their normal maturity dates and, accordingly, under applicable California law were not obligated to pay the entire sum

designated "Time Price Differential," but only a lesser sum. In these circumstances, the bank debited the reserve account for the portion of the sum that was no longer due from the purchaser. In the above example of a 15-month contract, if the purchaser paid up the contract in 6 months, the bank would reduce the amount of the time price differential by the sum of \$44.20, of which \$22.83 would be entered in its unearned discount account and \$21.37 would be charged to the dealer's reserve account. (R. 25-27.)

The following schedule sets forth, with respect to some of the contracts assigned by the partnership to the bank, the date and amount of the original credits by the bank to the reserve account, and the dates and amounts of the debits to such account in instances of purchasers' prepayments (R. 27) :

Credits to reserve account		Debits to reserve account	
<u>1950</u>	<u>Amount</u>	<u>1950</u>	<u>Amount</u>
January 21	\$ 29.90	February 17	\$ 19.90
March 27	15.40	June 3	2.20
June 1	106.00	June 15	88.32
May 27	49.35	July 20	30.00
June 20	52.24	June 29	52.24
April 14	84.21	August 10	56.01
July 14	50.80	August 16	37.53
August 2	107.57	August 18	94.37
August 4	211.55	August 29	153.40

The above schedule is merely illustrative and does not set forth all instances where prepayments were made by purchasers. (R. 28.)

In determining whether a dealer was entitled to withdraw any amount from the reserve account, the bank deducted from the amount of the reserve the

full amount of the partnership's recourse liability on any delinquent accounts and repossessions. During the year 1950 the credit balance in the reserve account of the Art Morgan Motor Company, reduced on account of delinquencies and repossessions, never exceeded 10 per cent of the aggregate unpaid balances of the contracts that had been assigned by the partnership to the bank. The partnership was not entitled to receive, and the bank was not required to make, and did not make, any payments to the partnership in pursuance of the terms of paragraph 10 of the above quoted agreement. At all times here material, the bank was financially sound and was able to pay any amount due to the partnership. (R. 28.)

During the taxable year the credits to the reserve account totaled \$16,895.08, and the debits thereto totaled \$1,130.76, leaving a credit balance of \$15,764.32 at the end of the year. The partnership did not report as income for the period in question any of the credits to the reserve account or any of the \$15,764.32 credit balance therein; nor did it report any of the debts as a deduction. The partnership did not claim a bad debt deduction for the taxable year in question. (R. 28.)

In determining the deficiency, the Commissioner increased the partnership's income for the taxable year 1950 by the sum of \$15,764.32, representing the credit balance in the reserve account as of the end of the taxable period 1950, and as a consequence increased the taxpayer's distributive share of the income of the partnership. The Commissioner also held that the \$15,764.32 item did not constitute a partnership de-

ductible item under the Internal Revenue Code of 1939. (R. 28-29.)

The Tax Court sustained the Commissioner's determination, holding that the amount of the credit balance in the dealer's reserve account on the books of the bank at the end of the taxable year 1950 constituted gross income to the partnership in that period. (R. 29-34.)

### SUMMARY OF ARGUMENT

All of the amounts withheld by the bank in purchasing conditional sales contracts from the taxpayer's partnership, an accrual-basis automobile dealer, and credited by the bank to a so-called dealer's reserve account in the partnership's name, were includible in the partnership's income in 1950, when withheld and credited. Essentially the same issue presented here has been decided adversely to the taxpayer by the Supreme Court, other Courts of Appeals, and the Tax Court, which have held that dealer reserves belong absolutely to the dealer and that provisions with respect to the payment of the reserves cannot serve to take from income amounts credited which would normally be determinative of his tax liability where a taxpayer is on the accrual basis. The facts here are not distinguishable from the factual situations in the cases decided adversely to the taxpayer.

The portions of the total finance charges which constituted the source of the reserves here in question represented an accrued liability of the bank which the partnership was entitled to receive as a result of the sale of the contracts. As the Supreme Court has in

effect held, they fall into the same category—tax-wise—as reserves of the type which that Court had before it in its recent dealer reserve cases.

The fact that some of the contracts here involved were prepaid, and that the reserve was debited by the bank, proportionately, warrants no change in result here. The charge represented part of the sales price for the commodity sold—just as the cash amount paid would have been regarded if a purchaser had bought the automobile outright, or as the amount paid on a time basis would have been considered if the dealer had retained the retail paper.

Assuming, *arguendo*, that the exact amounts in the reserve accounts which the partnership had a right to receive were in dispute or that eventually it might actually receive only part or even none of the amounts credited, the taxpayer still would be obligated to report the amounts in the reserves as income when the credits were made. There was a presently fixed right eventually to receive those amounts. Once credited to the dealer's reserve, only one of two things could happen: the full amount in the reserve would either subsequently be paid to the dealer in cash or used to discharge the dealer's indebtedness to the finance company. Insofar as the realization of income is concerned, application of the amount in discharge of the dealer's indebtedness is the equivalent of actual payment of such amount to the dealer in cash. It is fundamental that, when the taxpayer's right to an income item becomes fixed, accrual is not to be deferred merely because actual payment is postponed.

After the Supreme Court's decision in the dealers

reserve cases argued before it, an effort was made to have the Court distinguish those cases (allegedly involving only holdback situations) from a case in which, concededly, the exclusive source of the reserve was the finance charge. The Supreme Court, however, denied certiorari in the latter instance.

### ARGUMENT

**The Entire Amounts Withheld By the Bank In Purchasing Conditional Sales Contracts From the Taxpayer's Partnership, An Accrual Basis Automobile Dealer, Which Amounts Were Credited By the Bank To A Reserve Account in the Partnership's Name, Were Includible in the Partnership's Income In 1950 When Withheld and Credited**

The sole issue in this case relates to the failure of the taxpayer's accrual-basis partnership to report as income in 1950 amounts in a reserve account maintained in its name by the bank to which it assigned conditional sales contracts. The taxpayer in his return for that year reported only his distributive share of the income reported by the partnership. In its business of selling used automobiles on the installment plan, the partnership assigned conditional sales contracts to the bank, either with recourse (those sold from January 7, 1950, to July 1, 1950) or without recourse (those sold from July 1950 until the end of the year). The bank paid the partnership the unpaid cash purchase price of the contract, plus the motor vehicle tax which occasionally would be paid direct to the Department of Motor Vehicles, depending on whether the partnership or the bank cleared title to the car. A portion of the finance charges or

interest was credited by the bank to a dealer's reserve account. That portion represented the difference between the bank's discount of 4 per cent and the total finance charges or time price differential. The amount varied, depending upon what the partnership saw fit to charge the purchaser. During 1950 some of the purchasers whose contracts had been assigned satisfied their obligations prior to their normal maturity dates, and accordingly, under applicable California law (Section 2982, California Civil Code, 11 West's Annotated California Codes, R. 26), were obligated to pay less than the entire finance charges. In such circumstances, the bank debited the reserve account for the portion of the finance charges no longer due from the purchaser. The taxpayer here contends (Br. 11-32) that the portion of the finance charges credited to the partnership is not income to him until it is subject to immediate collection.

Essentially the same issue as presented here has been decided adversely to the taxpayer by the Supreme Court in *Commissioner v. Hansen*, 360 U.S. 446 (affirming *Baird v. Commissioner*, 256 F. 2d 918 (C.A. 7th); and reversing *Hansen v. Commissioner*, 258 F. 2d 585 (C.A. 9th), and *Glover v. Commissioner*, 253 F. 2d 735 (C.A. 8th)); *United States v. Hine Pontiac*, 360 U.S. 715 (reversing judgments in three cases entered by the Fifth Circuit on stipulation), petition for rehearing denied, October 12, 1959; *United States v. Colonial Chevrolet Corp.*, 360 U.S. 716 (reversing judgments in two cases entered by the Fourth Circuit on stipulation), petition for rehearing denied, October 12, 1959; see also *Wiley v.*

*Commissioner*, 266 F. 2d 48 (C.A. 6th), certiorari denied, October 12, 1959; *Schaeffer v. Commissioner*, 258 F. 2d 861 (C.A. 6th), certiorari denied, 360 U.S. 917; and *Wood v. Sarwark* (C.A. 9th), decided September 18, 1959. Numerous Tax Court decisions<sup>2</sup> have also uniformly held that dealer reserves belong absolutely to the dealer and that provisions with respect to the payment of the reserves cannot serve to take from income amounts credited which would normally be determinative of his tax liability where a taxpayer is on the accrual basis.

Since this issue has already been presented to and considered by this Court, we shall not burden the Court with further extended argument on the question. We would, however, respectfully ask this Court's reconsideration of its decision in *Hansen* in the light of the Supreme Court's decision in that case and in *Hine Pontiac*. There is no apparent reason for distinguishing the instant appeal on its facts from the cases decided adversely to the taxpayer in the Supreme Court.

The Tax Court properly held (R. 32-33) that the portion of the finance charge which is the source of the reserves here in question was an accrued liability of the bank which the partnership was entitled to receive as a result of the sale of the contracts, it having already been paid in full for the automobile it-

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<sup>2</sup> See *Kilborn v. Commissioner*, 29 T.C. 102, affirmed *sub nom.* *United States v. Hine Pontiac*, *supra*; *Evans Motor Co. v. Commissioner*, 29 T.C. 555; *Brodsky v. Commissioner*, 27 T.C. 216; *Shoemaker-Nash, Inc. v. Commissioner*, 41 B.T.A. 417; see also Rev. Rul. 57-2, 1957-1 Cum. Bull. 17.

self. The taxpayer errs in the assumptions (Br. 19) that the finance charge had not been earned and that the arrangement between the partnership and the bank was in the nature of a joint venture in which each was to share in the finance charge (time price differential) as it was "earned". The Tax Court rejected the assumptions. (R. 32,33.) In effect, the taxpayer contends (as the taxpayers in part contended in *Hansen*), that to the extent that the credits in the dealer's reserve accounts reflected percentages of finance charges which the bank agreed to allow the partnership, the amounts should in no event be regarded as its accrued income. In *Hansen*, the Supreme Court decided only that the taxpayers had "wholly failed to sustain the burden of showing that *any* part of the amounts credited on the books of the finance companies to the respective Dealers Reserve Accounts was entitled to special treatment." 360 U.S. 446, 469. (Italics supplied.) The Supreme Court did not hold that finance charges were entitled to special treatment; nor would the rationale which the Supreme Court employed in *Hansen* permit such a conclusion. As in *Schaeffer, supra*, the amounts credited to the dealer's reserve account represented an obligation on the part of the purchaser of the automobile to pay finance charges (which were actually prepaid interest to the date of the maturity of the note) in addition to the unpaid balance of the purchase price. But that additional amount was included in the contract executed between the purchaser of the automobile and the partnership, and assigned by the partnership to the bank. Insofar as the taxpayer here

was concerned, the sale of the contracts covering the installment sales of the automobiles was as much a part of the partnership's business as the sale of the automobiles, and there is no reason why the gain from the sale of the contracts (including the portion of the finance charges credited to the reserve account) should not be accrued when the sales occurred. *Shoemaker-Nash, Inc. v. Commissioner*, 41 B.T.A. 417.

The fact that some contracts were prepaid, and the partnership's account was debited by the bank with the portion of the finance charge theretofore credited (R. 27), warrants no change in the result reached below. The prepayment, debiting, and corresponding diminution of the bank's obligation to the partnership must be regarded as a condition subsequent to its liability to pay at the time the sale was made and the credit was entered. Thus, contrary to the taxpayer's argument (Br. 19) no valid distinction can be made between accruing a reserve based on a portion of the finance charge and accruing other portions of the reserve, for the time price differential of the automobile included the finance charge or interest (R. 24). Insofar as the purchaser was concerned, the finance charge or interest (time price differential), which was shown in the contract as payable to the dealer, represented the price of the commodity—just as the cash amount paid would have been so regarded if the purchaser had bought the automobile outright, or just as the amount paid on a time basis would have been considered if the dealer himself had chosen to retain the retail paper, instead of selling it.

As the Sixth Circuit stated in *Schaeffer v. Commissioner*, *supra* (p. 865): "The income \* \* \* accrued \* \* \* before the transfer \* \* \* to the finance company, and such subsequent transfer does not change the legal effect of the prior completed transaction." The Fifth Circuit in *Texas Trailercoach, Inc. v. Commissioner*, 251 F. 2d 395, 397, was constrained to recognize that "When we get down to what actually happens \* \* \* the finance company \* \* \* has a *fixed percentage for its finance charges worked into the sales price.*" (Italics supplied.) The correctness of that view has been recognized in law review articles discussing the origin, development and function of the practice of dealer participation in finance charges. See Hardy, Another View On The Origin of Dealer Participation In Automobile Finance Charges, 30 Ind. L. J. 311 (1955); Note, Is Control Of Dealer Participation A Necessary Adjunct To Regulation Of Installment Sales Financing?, 28 Ind. L. J. 641 (1953); and Pecar, Dealer Participation In Automobile Finance Charges: A Reply, 30 Ind. L. J. 319 (1955). All of these articles assume that the amounts credited to dealers' reserve accounts in arrangements between dealers and finance companies represent, in intention and reality, part of the purchase price for the commodities sold.

The taxpayer mistakenly places reliance (Br. 13-18) on cases, including *North American Oil v. Burnet*, 286 U.S. 417, which in reality support the Commissioner here. Under the claim of right doctrine first enunciated in that case, and reaffirmed in *United States v. Lewis*, 340 U.S. 590, and *Healy v. Commis-*

sioner, 345 U.S. 278, the taxpayer still would be obligated to report the amounts in the reserves as income when the credits were made, even assuming *arguendo* that the exact amounts in the reserve accounts which the partnership had a right to receive were in dispute, or that eventually it might actually receive only part, or even none, of the amounts credited.

Moreover, once an amount was credited to the dealer's reserve here involved, only one of two results followed: it would either subsequently be paid to the dealer in cash or used to discharge the dealer's indebtedness to the finance company. Insofar as the realization of income is concerned, application of the amount in discharge of the dealer's indebtedness is the equivalent of actual payment of such amount to the dealer in cash. See *Clark v. Woodward Construction Co.*, 179 F. 2d 176 (C.A. 10th). And it is of course fundamental that when the taxpayer's right to an income item becomes fixed, accrual is not to be deferred merely because actual payment must be postponed. *Spring City Co. v. Commissioner*, 292 U.S. 182; *Commissioner v. Hansen*, *supra*.

In any event, after the Supreme Court had rendered its decision in the *Hansen* case, *supra*, it denied a petition for a writ of certiorari in *Wiley v. Commissioner*, *supra*, a case in which, concededly, the exclusive source of the reserve was the finance charge, on which ground the taxpayer unsuccessfully sought to distinguish the factual situation in his case from that in the *Hansen* and related cases.

CONCLUSION

The decision of the Tax Court is correct and should be affirmed.

Respectfully submitted,

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DECEMBER, 1959.

## APPENDIX

## Internal Revenue Code of 1939:

## SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation or personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. \* \* \*

\* \* \* \*

(26 U.S.C. 1952 ed., Sec. 22.)

## SEC. 41. GENERAL RULE.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but <sup>if</sup> ~~if~~ no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period

or does not keep books, the net income shall be computed on the basis of the calendar year.

(26 U.S.C. 1952 ed., Sec. 41.)

SEC. 42 [as amended by Sec. 114, Revenue Act of 1941, c. 412, 55 Stat. 687]. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

(a) *General Rule.*—The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. \* \* \*

\* \* \* \*

(26 U.S.C. 1952 ed., Sec. 42.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

SEC. 29.41-1. *Computation of net income.*—Net income must be computed with respect to a fixed period. Usually that period is 12 months and is known as the taxable year. Items of income and of expenditure which as gross income and deductions are elements in the computation of net income need not be in the form of cash. It is sufficient that such items, if otherwise properly included in the computation, can be valued in terms of money. The time as of which any item of gross income or any deduction is to be accounted for must be determined in the light of the fundamental rule that the computation shall be made in such a manner as clearly reflects the

taxpayer's income. If the method of accounting regularly employed by him in keeping his books clearly reflects his income, it is to be followed with respect to the time as of which items of gross income and deductions are to be accounted for. (See sections 29.42-1 to 29.42-3, inclusive.) If the taxpayer does not regularly employ a method of accounting which clearly reflects his income, the computation shall be made in such manner as in the opinion of the Commissioner clearly reflects it.